

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10450 of 2006

Dated: 23-10-2006

Between:

Smt. Jogindar Kaur.

..... PETITIONER

AND

The State of A.P., rep. by the District Collector, Karimnagar, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.10450 of 2006

ORDER:

Aggrieved by the notice dated 29-04-2006 issued by respondent No.2, the petitioner filed instant writ petition seeking invalidation of the same.

The brief fact of the matter as alleged in the writ affidavit is as follows.

The land admeasuring Acs.10.00 comprised in survey No.439 situated at Chinthakunta Village in Karimnagar Mandal and District was allotted to one Gopal, who was a freedom fighter, vide proceedings dated 21-10-1963. The said Gopal obtained permission from respondent No.1 to sell the land. Permission was granted by proceedings 14-10-1992. Out of the said land, the petitioner statedly purchased land admeasuring Acs.7.20 guntas from the assignee, namely, said Gopal under registered sale deed dated 17-07-1997 after paying the sale consideration of Rs.1,42,500/-. She also allegedly obtained pattadar passbook and title deeds from respondent No.2 in September, 1997. Respondent No.2 now issued the impugned notice calling upon the petitioner to show cause/explain as to why the land in said survey number should not be resumed to the Government for distribution of house site pattas after paying ex-gratia amount.

The learned counsel for the petitioner submits that there is no need for resumption of the land. Secondly he would urge that even if the land is resumed, as per the conditions of assignment the petitioner is entitled for compensation as per the provisions of the Land Acquisition Act, 1894 (for short, the Act). Reliance is placed on the Full Bench decision of seven learned Judges of this Court in **LAO-cum-RDO, Chevella Division, Domalaguda, Hyd v Mekala Pandu** ^[1] and also another decision of this Court in **P. Mallaiah v Government of A.P.** ^[2].

The learned Assistant Government Pleader opposes the writ petition contending that against the show-cause notice, writ petition would not lie. He, however, does not dispute the legal position canvassed by the learned counsel for the petitioner with regard to the payment of compensation when the assigned land is resumed.

In **P. Mallaiah** (supra), this Court relied on **Mekala Pandu** (supra) and disposed of similar contentions in the following manner.

Whether the Government is bound to pay compensation to the assignees under the provisions of the Act where such assigned lands are resumed by the Government for public purpose? A Full Bench of five learned Judges of this Court in

State of Andhra Pradesh v Bondapalli Sanyasi ^[3] while

overruling the earlier decision of Full Bench of three learned Judges in **State of A.P. v P.Peda Chinnayya**^[4], held that when the land is resumed in terms of the grant, no compensation be payable towards resumption of land and that compensation, however, is payable if the lands have not been resumed by following due process of law. The Full Bench of seven learned Judges in **Mekala Pandu** case (supra) on reconsideration of the issue did not accept the view of the Full Bench of five learned Judges in **Bondapalli Sanyasi** case (supra) and held that assignees of Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession by the State in accordance with the terms of the grant. It was also held that the conditions incorporated in patta/deed of assignment shall not operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land... ..

... .. It is brought to the notice of this Court that State has filed Special Leave Petition before the Supreme Court against **Mekala Pandu** case (surpa). This Supreme Court has passed orders staying any further payment of compensation which only means that even if assigned lands are resumed, the State need not pay any compensation as per the provisions of the Act in view of the stay orders. Though the ratio in **Mekala Pandu** case (supra) applies to this case, having regard to the orders of the stay, the petitioner can enforce his right to claim compensation only when the view of this Court in **Mekala Pandu** case (supra) is upheld. It is also brought to the notice of this Court that in accordance with the orders of Government in G.O.Ms.No.1307, the market value at the rate of Rs.7,000/- per acre was paid to the petitioner (total amount of Rs.15,698/-), which includes 15% additional ex-gratia as per the Government Order. But, as per the decision in **Mekala Pandu** case (supra), the petitioner is entitled to claim compensation as per the provisions of the Land Acquisition Act, that is to say, solatium, additional compensation and interest. A Mandamus shall issue in the above terms. However, Mandamus shall be enforceable subject to Judgment of the Supreme Court in the appeal filed against **Mekala Pandu** case (supra).

As the writ petition is filed at the stage of notice, this Court is not inclined to interfere. Liberty is given to the petitioner to make a representation to respondent No.2 – if not already made; raising all her objections for resumption of the land for public purpose. In case the respondents decide to resume the land, the petitioner shall be entitled for compensation as per the Act. There shall be a Mandamus in similar terms. However, this Court makes it clear that the Mandamus for payment of compensation shall be enforceable subject to the result of

the Civil Appeal filed by the State of Andhra Pradesh/Government of Andhra Pradesh against the judgment of the Full Bench of this Court in **Mekala Pandu** (supra).

The writ petition, with the above observations, is accordingly disposed of. No costs.

V.V.S.RAO, J

23rd October, 2006
ghn

[\[1\]](#) 2004(2) ALD 451 (LB)

[\[2\]](#) 2006(3) ALD 148 = 2006(2) ALT 742

[\[3\]](#) 2002 (2) ALD 1 (LB) = 2002 (1) ALT 543D (LB)

[\[4\]](#) 1996 (2) ALD 1215 (FB) = 1997 (1) ALT 498 (FB)